

Agreement # _____
Service PO # _____

Attachment A

**STATE OF SOUTH DAKOTA
DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS**

**Grant Agreement
Between**

State of South Dakota
Department of Human Services
Division of Long Term Services and Supports
Hillsview Plaza, East Highway 34
c/o 500 East Capitol
Pierre SD 57501-5070

Referred to as Grantee

Referred to as State

1. This is an agreement for an award of Federal and/or State financial assistance to a subrecipient. Grantee is an independent contractor and not an officer, agent, or employee of the State of South Dakota. See Exhibit A for additional subrecipient information.
2. This grant is made for the purpose of ().

Amount provided by State is	.
Amount matched by Grantee	.
Total Grant Amount	.

Dollars provided by State consist of the following:

Non-Federal State dollars	.
Federal ()	.
(CFDA #)	.

3. **PERIOD OF PERFORMANCE:**
This agreement shall be effective as of _____ and shall end on _____, unless sooner terminated pursuant to the terms hereof.

4. **PROVISIONS:**

- a. The Grantee agrees to:

- 1.

b. The State agrees to:

1. Permit the Grantee a line item budget flex of ten percent. The aggregate of any and all budget flexes will not exceed ten percent of the total Grant amount as specified in Section 2 above. This line item flex does not include the category of administrative/overhead.
- 2.

5. METHOD AND SOURCE OF GRANTEE PAYMENT:

Grantee agrees to submit an initial bill for services within 30 days following the end of the **month** in which services were provided. If the Grantee cannot submit a bill within the 30-day timeframe, a written request for an extension of time must be provided to the State. If a bill has not been received by the State, the State reserves the right to refuse payment. Final billing for agreements ending May 31, 2020 must be received by the State by June 5, 2020.

6. PROPERTY MANAGEMENT STANDARDS:

The Grantee agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a federal grant.

7. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Human Services' rules, regulations and policies to the Grantee and to assist in the correction of problem areas identified by the State's monitoring activities.

8. LICENSING AND STANDARD COMPLIANCE:

The Grantee agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Grantee's failure to ensure the safety of all individuals served is assumed entirely by the Grantee.

9. ASSURANCE REQUIREMENTS:

The Grantee agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Drug-Free Workplace, Title VI of the Civil Rights Act of 1964, Section 504 and Section 511 of the Rehabilitation Act of 1973 as amended, Title IX of the Education Amendments of 1972, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, Deficit Reduction Act of 2005, and American Recovery and Reinvestment Act of 2009, as applicable.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Grantee certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the federal government or any state or local government department or agency. Grantee further agrees that it will immediately notify the State, if during the term of this Agreement, the Grantee or its principals become subject to debarment, suspension, proposed for debarment, or declared ineligible from participating in transactions by the federal government, or by any state or local government department or agency.

11. OFFICE OF INSPECTOR GENERAL EXCLUSIONARY LIST REQUIREMENTS:

Grantees, who utilize federal Medicaid or Medicare funds, agree to screen all employees and contractors, prior to hiring or contracting and on a regular basis, to determine whether any of them are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities. Grantee shall maintain documentation to support the screenings were performed and shall immediately report to DHS all cases in which employees are found on the exclusionary list. Grantee understands that no payment shall be made for any goods or services furnished, ordered, or prescribed by an excluded individual or entity and any payment made for services provided by excluded parties will be recouped; and recoupment may include penalties.

12. RETENTION AND INSPECTION OF RECORDS:

The Grantee agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other, and other information records necessary for reporting and accountability required by the State. The Grantee shall retain such records for six years following termination of the agreement. If such records are under pending audit, the Grantee agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this agreement.

All payments to the Grantee by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Grantee.

13. AUDIT REQUIREMENTS:

If the total of all Department of Human Service funding is greater than \$750,000 during the Grantee's fiscal year, the Grantee agrees to submit to the State a copy of an annual entity-wide, independent financial audit. The audit shall be completed and filed with the Department of Human Services by the end of the fourth month following the end of the

fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. The audit should be sent to:

Department of Human Services
 Provider Reimbursements and Grants
 3800 East Highway 34
 c/o 500 East Capitol
 Pierre, SD 57501

If federal funds of \$750,000 or more have been received by the Grantee the audit shall be conducted in accordance with OMB Uniform Guidance 2 CFR Chapter I, Chapter II, Part 200, et al Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the Auditor's report, whichever is earlier. For a Uniform Guidance audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
 427 South Chapelle
 % 500 East Capitol
 Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or a Uniform Guidance audit, the Grantee assures resolution of all interim audit findings. The Grantee shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s)/subrecipient(s) may perform.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

14. COST PRINCIPLES

Grantee agrees to comply in full with the applicable cost principles as outlined in OMB Uniform Guidance 2 CFR Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

15. TERMINATION:

This agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

16. FUNDING:

This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

17. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

18. CONTROLLING LAW:

This agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

19. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this agreement are superseded by the terms of this agreement, and except as specifically provided herein, this agreement constitutes the entire agreement with respect to the subject matter hereof.

20. SEVERABILITY:

In the event that any provision of this agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

21. NOTICE:

Any notice or other communication required under this agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

22. SUBCONTRACTORS:

Grantee may not use subcontractors to perform the services described herein without the express prior written consent of the State. Grantee will include provisions in its subcontracts requiring its subcontractors/subrecipients to comply with the applicable provisions of this agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this agreement. Grantee will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

23. HOLD HARMLESS:

The Grantee agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the grantee to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

24. INSURANCE:

Before beginning work under this agreement, the Grantee shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. The Grantee shall furnish copies of insurance policies if requested by the State.

a. Commercial General Liability Insurance:

The Grantee shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit.

b. Business Automobile Liability Insurance:

The Grantee shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

c. Worker's Compensation Insurance:

The Grantee shall procure and maintain workers' compensation and employer' liability insurance as required by South Dakota law.

d. Professional Liability Insurance:

The Grantee agrees to procure and maintain professional liability insurance with a

limit not less than \$1,000,000.00.

25. REPORTING:

Grantee agrees to immediately report to the Department any event or incident encountered in the course of performance of this agreement which results in injury to any person or property, or which may otherwise subject Grantee, or the State of South Dakota or its officers, agents or employees to liability. Grantee shall report any such event to the State immediately upon discovery.

Grantee's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Grantee's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law. Reporting to the State under this section shall not excuse or satisfy any obligation of Grantee to report any event to law enforcement or other entities under the requirements of any applicable law.

26. FEDERAL FUNDING ACCOUNTING AND TRANSPARENCY ACT

The Subrecipient agrees to:

- a. Assist and support State in complying with Federal Funding Accounting and Transparency Act (FFATA) requirements by providing any and all information the State must report to be compliant with FFATA. More information about FFATA reporting requirements can be found at www.fsrs.gov.
- b. Indemnify and hold harmless State for any amount of costs for non-compliance with FFATA requirements due to Subrecipient (Grantee) non-compliance or failure to comply with subsection (a) of this Provision. Subrecipient understands and agrees that it is liable to State for any costs determined to be not allowed by the United States government for non-compliance with FFATA requirements due to Subrecipient's failure to supply State with any requested information necessary to comply with FFATA.

27. AWARD RECIPIENT ATTESTATION

The award recipient or sub-recipient attest to meeting the following requirements per SDCL 1-56-10:

- a. A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;
- b. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;
- c. An effective internal control system is employed by the recipient's or sub-recipient's organization; and

- d. If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

28. PROTECTED HEALTH INFORMATION

Does this Agreement involve Protected Health Information (PHI)? YES (X) NO ()

If PHI is involved, a Business Associate Agreement is attached and is fully incorporated herein as part of the Agreement (see Appendix A).

29. CONFLICT OF INTEREST

Grantee agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Grantee expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

Agreement # _____

30. AUTHORIZED SIGNATURES: In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____	_____
Grantee Signature	Date
_____	_____
State - DHS Division Director	Date
_____	_____
State - DHS Office of Budget and Finance	Date
_____	_____
State - Office of the Secretary	Date

Approved Template CJB 05/30/2019
Approved Contract _____

Agreement # _____

Contract Description Code _____
State Agency Coding: _____

CFDA Number _____

Company _____
Account _____
Center Req _____
Center User _____
Dollar Total _____
SVC PO Code _____

Company _____
Account _____
Center Req _____
Center User _____
Dollar Total _____
SVC PO Code _____

Company _____
Account _____
Center Req _____
Center User _____
Dollar Total _____
SVC PO Code _____

DHS Program Contact Person _____
Phone _____

DHS Fiscal Contact Person Alan Fickbohm
Phone (605) 773-5990

Grantee Program Contact Person _____
Phone _____

Grantee Fiscal Contact Person _____
Phone _____

Agreement# _____
PO# _____
Vendor # _____
Group _____

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Appendix A

HIPAA Business Associate Agreement

A. Definitions of Terms

1. Agreement means the agreement to which this Business Associate Agreement is attached to including this attachment entitled HIPAA Business Associate Agreement.

2. Business Associate shall have the meaning given to such term in 45 C.F.R. section 160.103 and 42 U.S.C. section 17938, and in reference to the party of this agreement, shall mean the Provider, Consultant, or other entity contracting with the State of South Dakota, Department of Human Services as set forth more fully in the Agreement this Business Associate Agreement is attached.

3. C.F.R. shall mean the Code of Federal Regulations.

4. Department shall mean South Dakota Department of Human Services

5. Designated Record Set shall have the meaning given to such term in 45 C.F.R. section 164.501.

6. Covered Entity shall have the meaning given to such term in 45 C.F.R. section 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Human Services.

7. Protected Health Information or PHI shall have the meaning given to such term in 45 C.F.R. section 164.103 and section 164.501, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

8. Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, Subparts A and C, 45 CFR 164.314, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009) as it directly applies, as in effect on the date of this Business Associate Agreement.

B. Obligations of the Business Associate.

1. Security Safeguards. The Business Associate shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized use or disclosure of PHI, and that reasonably protect the confidentiality, integrity, and availability

of any electronic Protected Health Information that it creates, receives, maintains or transmits to or on behalf of Covered Entity as required by the Regulations. The Business Associate agrees to comply with the requirements of the Privacy and Security Rules directly applicable to Business Associates including the HITECH Act.

2. Affiliates, Agents, Subsidiaries and Sub-Contractors. The Business Associate shall require that any agents, employees, affiliates, subsidiaries or sub-contractors, to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Department agree in writing to the same use and disclosure restrictions imposed on the Business Associate by this Agreement.

3. Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon notice to the Business Associate, the Business Associate shall report to the Department any uses or disclosures of PHI not authorized by this Agreement. The Business Associate shall also notify the affected individual of the breach. If the breach affects more than 500 individuals, the Business Associate must contact the U.S. Health and Human Services Secretary and the media, under the American Recovery and Reinvestment Act of 2009. The Business Associate shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice provided to the Department by the Business Associate regarding unauthorized uses and/or disclosures of PHI, the Business Associate shall describe the remedial or other actions undertaken or proposed to be undertaken regarding the unauthorized use or disclosure of PHI.

4. Permitted Uses and Disclosures. The Business Associate may not use or disclose PHI received or created pursuant to this Agreement except as follows:

(a) The Business Associate's Operations – Permitted Uses of PHI. The Business Associate may use the PHI it receives in its capacity for the proper management and administration of the Business Associate or to carry out the Business Associate's legal responsibilities.

(b) The Business Associate's Operations – Permitted Disclosures of PHI. The Business Associate may disclose the PHI it obtains in its capacity as a Business Associate if such disclosure is necessary for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, and:

(i) The disclosure is required by law; or

(ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person or entity notifies the Business Associate (and the Business Associate in turn notifies the Department) of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Disclosure Accounting. In the event that the Business Associate makes any disclosures of PHI related to the business associate function under this Agreement that are subject to the accounting requirements of 45 C.F.R. section 164.528, the Business Associate promptly shall maintain a record of each disclosure, including the date of the disclosure, the name and if available, the address of the recipient of the PHI, a brief description of the PHI disclosed and a brief description of the purpose of the disclosure. The Business Associate shall maintain this record for a period of six (6) years and make available to the Department upon request in an electronic format so that the Department may meet its disclosure accounting obligations under 45 C.F.R. section 164.528.

6. Access to PHI by Individuals. The Business Associate shall cooperate with the Department to fulfill all requests by individuals for access to the individual's PHI that are approved by the Department. The Business Associate shall cooperate with the Department in all respects necessary for the Department to comply with 45 C.F.R. section 164.524. If the Business Associate receives a request from an individual for access to PHI that affects funding eligibility, the Business Associate immediately shall forward such request to the Department within (10) business days. The Department shall be solely responsible for determining the scope of PHI and Designated Record Set to be released with respect to each request by an individual to access or obtain copies of the individual's PHI covered by this Agreement and in accordance with C.F.R. 164.524. The Business Associate shall make the PHI available in the format requested by the individual and approved by the Department, unless the PHI is not readily producible in such format, in which case the PHI shall be produced in hard copy format.

7. Access by the Department to the Business Associate's Books and Records. The Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Department available to the Department and the Secretary of the Department of Health and Human Services for purposes of determining the Department's compliance with the HIPAA laws and regulations. Upon reasonable notice to the Business Associate and during the Business Associate's normal business hours, the Business Associate shall make such internal practices, books and records available to the Department to inspect for purposes of determining compliance with this Agreement.

8. Amendment of PHI. As directed and in accordance with the time frames specified by the Department, the Business Associate shall incorporate all amendments to PHI received from the Department. The Business Associate shall provide written notice to the Department within ten (10) business days confirming that the Business Associate has made the amendments to PHI as directed by the Department. This confirmation shall also contain any other information that may be necessary for the Department to provide adequate notice to the individual in accordance with 45 C.F.R., section 164.526. The Department warrants that all time frames specified will be made in good faith and reasonable length so that the Business Associate can comply with the timeframe.

C. Obligations of the Department

1. The Department shall notify Business Associate of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

2. The Department shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect Business Associates use or disclosure of PHI.

3. The Department shall notify Business Associate of any restriction to use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

D. Term and Termination.

1. Term. The term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner

2. Termination by Breach. The Department may immediately terminate the primary Agreement this Business Associate Agreement is attached to if the Business Associate has breached a material term of this Business Associate Agreement. Alternatively, the department may choose to

(i) provide Business Associate with five (5) days written notice of the existence of an alleged material breach; and

(ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Department within five (5) days.

Business Associate's failure to cure shall be grounds for immediate termination of the primary Agreement to which the Business Associate Agreement is attached. Department's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other. However, in the event that the Department determines that termination of the Agreement is not feasible, the Department shall have the right to report the breach to the Secretary of the Department of Health and Human Services, notwithstanding any other provisions of this Agreement to the contrary.

3. Effects of Termination; Disposal of PHI. Upon termination of the primary Agreement to which this Business Associate Agreement is attached, the Business Associate shall recover all PHI that is in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors. The Business Associate shall return to the Department or destroy all PHI that the Business Associate obtained or maintained pursuant to this Agreement on behalf of the Department. If the parties agree at that time that the return or destruction of PHI is not feasible, the Business Associate shall extend

the protections provided under this Agreement to such PHI, and limit further use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the Business Associate to recover all PHI in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors, the Business Associate shall provide written notice to the Department regarding the nature of the unfeasibility and the Business Associate shall require that its agents, affiliates, subsidiaries and sub-contractors agree to the extension of all protections, limitations and restrictions required of the Business Associate hereunder.

E. Miscellaneous.

1. The Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by the Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Business Associate's own purposes or that any information in the Business Associate's possession or control, or transmitted or received by the Business Associate, is or will be secure from unauthorized use or disclosure. The Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

2. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify the Business Associate of any actions it reasonably deems are necessary to comply with such changes, and the Business Associate promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Business Associate may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.

3. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of the Department. The Department may assign its rights and obligations under this Agreement to any successor or affiliated entity.

4. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Business Associate in the fulfillment of its obligations under this Agreement, available to the Department, at no cost to the Department, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Department, its directors, officers, or employees, except where the Business Associate or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

The Department shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Department in the fulfillment of its obligations under this Agreement, available to the Business Associate, at no cost to the Business Associate, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Business Associate, its directors, officers, or employees, except where the Department or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

6. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA rules.

7. Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the primary Agreement to which Business Associate Agreement is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.